

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:21-CV-00452-RJC-DSC**

KEVIN FONSECA,

Plaintiff,

v.

**AMERICAN NATIONAL RED CROSS
et. al.,**

Defendants.

**MEMORANDUM AND
RECOMMENDATION AND ORDER**

THIS MATTER is before the Court on “Defendants’ Motion to Dismiss...” (document #3) and the parties’ related briefs and exhibits.

This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and the Motion is now ripe for consideration.

Having fully considered the arguments, the record, and the applicable authority, the undersigned respectfully recommends that Defendants’ Motion to Dismiss be granted as discussed below.

Pro se Plaintiff brings this action against his former employer American National Red Cross for wrongful discharge, retaliation, and incorrect calculation of lost wages and health insurance premiums. For the complete factual and procedural history, see NCWD File No. 3:20cv526-RJC-DSC, “Memorandum and Recommendation” (document #13) (recommending dismissal on grounds that Plaintiff’s claims were resolved in binding arbitration), aff’d, “Order” (document #14).

Plaintiff has continued his pattern of filing vexatious litigation arising from his dissatisfaction with the arbitration award. See NCWD File No's 3:20-cv-620-RJC-DSC and 3:21-cv-00368-RJC-DSC.

Defendants move to dismiss and request that the Court enter a pre-filing injunction against Plaintiff. For the reasons previously stated and affirmed, and for the additional reasons stated in Defendants' briefs (documents ##3-1 and 7), the undersigned respectfully recommends that the Complaint be dismissed with prejudice.

Pursuant to the All Writs Act, the Court has the authority to issue pre-filing injunctions against vexatious litigants. See Thomas v. Fulton, 260 F. App'x 594, 596 (4th Cir. 2008) (citing Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 817 (4th Cir. 2004)). Although the implementation of such measures against pro se plaintiffs should be approached with caution, when a litigant continuously abuses the judicial process "by filing meritless and repetitive actions," a pre-filing injunction is appropriate. Cromer, 390 F.3d at 818 (quoting Brow v. Farrelly, 994 F.2d 1027, 1038 (3d Cir. 1993)). This includes "successive lawsuits involving the same issues against the same parties that are vexatious in nature." 43A C.J.S. Injunctions § 109 (2021).

ORDER

IT IS ORDERED that all further proceedings in this matter, including discovery, are **STAYED** pending the District Judge's consideration of the recommendations herein.

RECOMMENDATION

FOR THE FOREGOING REASONS, the undersigned respectfully recommends that "Defendants' Motion to Dismiss..." (document #3) be **GRANTED** and the Complaint **DISMISSED WITH PREJUDICE**. Further, the undersigned respectfully recommends that the District Judge enter a pre-filing injunction.

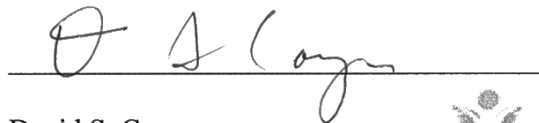
NOTICE OF APPEAL RIGHTS

The parties are hereby advised that, pursuant to 28 U.S.C. §636(b)(1)(c), written objections to the proposed findings of fact and conclusions of law and the recommendation contained in this Memorandum must be filed within fourteen days after service of same. Failure to file objections to this Memorandum with the Court constitutes a waiver of the right to de novo review by the District Judge. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005); Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir. 1997); Snyder v. Ridenour, 889 F.2d 1363, 1365 (4th Cir. 1989). Moreover, failure to file timely objections will also preclude the parties from raising such objections on appeal. Thomas v. Arn, 474 U.S. 140, 147 (1985); Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Wells, 109 F.3d at 201; Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk is directed to send copies of this Memorandum and Recommendation and Order to pro se Plaintiff, to defense counsel, and to the Honorable Robert J. Conrad, Jr.

SO RECOMMENDED.

Signed: November 4, 2021



David S. Cayer
United States Magistrate Judge

